

O'BRIEN

Appl. No. 10/052,107

January 12, 2006

REMARKS/ARGUMENTS

Claims 4-6 and 8 stand rejected in the outstanding Official Action. Claims 4-6 have been amended and therefore claims 4-6 and 8 remain in the application.

Claims 4-6 and 8 stand rejected under 35 USC §112 (second paragraph) as being indefinite. Applicant notes that for the first time in prosecution of this application the Examiner makes a rejection of claims under 35 USC §112 (second paragraph). The Examiner states that claim 4 was "newly amended" apparently as support for making final this official action (dependent claim 4 was made independent in the last amendment by copying the subject matter of claims 1-3 from which it previously depended). However, it is noted that the language of claims 1-3 was not previously rejected under 35 USC §112, but this same language, now incorporated into amended claim 4, is the basis for the objection to claim 4. Essentially, the finality of the current amendment is improper.

Notwithstanding the above, the Examiner's suggestion that the objected to phrases could be rewritten as positive method statements is well taken, and Applicant has amended claim 4 to positively recite the steps of "encoding," "interleaving," "applying" and "using." Appropriate corrections have been made in claims 5 and 6 as well, even though these claims were not specifically identified as having objectionable language. Inasmuch as claims 5, 6 and 8 depend from claim 4, it is believed that the amendment to claim 4 alone would be sufficient to render these claims allowable. However, for consistency's sake, claims 5 and 6 have been amended along the lines of positive recitation of method steps.

The Examiner's indication that claims 4, 5, 6 and 8 would be allowable if rewritten to overcome the §112 (second paragraph) rejections is very much appreciated.

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Entry of the Amendment under the provisions of Rule 116

Entry of the above amendments pursuant to the provisions of Rule 116 is respectfully requested. As noted above, while independent claim 4 is identified as being "newly-amended" in the Amendment filed December 9, 2003, it is noted that the language which is the basis for the rejection in claim 4 is identical to language previously existent in claims 1, 2 and 3 and there was no §112 rejection of claims 1-3 in the first Official Action. Accordingly, Applicant could not have made the above amendments to claim 4 positively reciting the method steps any earlier than the present Amendment. Had the Examiner made the same §112 (second paragraph) rejections of claims 1-3, Applicant could have made the appropriate amendments in the December 9, 2003 Amendment. Accordingly, since Applicant could not have made the amendments at an earlier date, entry of the above amendments pursuant to the provisions of Rule 116 is respectfully requested.

It is further noted that entry of these amendments does not add new matter, does not add new claims and as indicated in paragraphs 4 and 5 of the Final Rejection, would appear to result in allowance of all pending claims in this application, thereby terminating prosecution and obviating the need for appeal. Meeting all the requirements of 37 CFR 1.116, entry of the above amendment is respectfully requested.

Having responded to all objections and rejections set forth in the outstanding Official Action, it is submitted that claims 4-6 and 8 are in condition for allowance and notice to that effect is respectfully solicited. In the event the Examiner is of the opinion that a brief telephone or personal interview will facilitate allowance of one or more of the above claims, he is respectfully requested to contact Applicant's undersigned representative.

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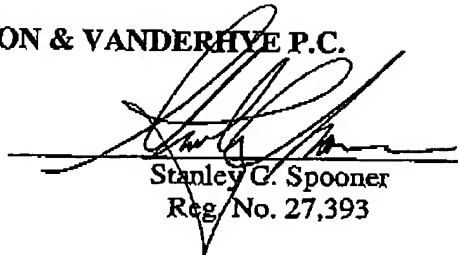
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Respectfully submitted,

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